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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/524,353	02/14/2005	Russell N Owen	10742-US-PCT (4214-24802)	4652

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EXAMINER	
SCHWARTZ, DARREN B	

ART UNIT	PAPER NUMBER
2435	

MAIL DATE	DELIVERY MODE
07/23/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No.	Applicant(s)	
	10/524,353	OWEN ET AL.	
	Examiner	Art Unit	
	DARREN SCHWARTZ	2435	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 20 July 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-11 and 19-28*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet

12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 21052010

13. ☐ Other: _____.

/Kimyen Vu/
Supervisory Patent Examiner, Art Unit 2435

/DARREN SCHWARTZ/
Examiner, Art Unit 2435

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 20 July 2010 have been fully considered but they are not persuasive.

Applicant argues on page 12 of Remarks: "The Office Action appears to equate the virtual machines 311 and 312 in Gbadegesin with the claimed domains. (A1) However, these features are not equivalent. (A2) A virtual machine has a particular meaning in the art; a virtual machine is a software implementation of a computer that executes programs like a physical machine. A domain, in contrast, is not a virtual machine because a domain is not a software implementation of a computer."

Regarding argument A1, the Examiner disagrees. The Examiner initially notes that a "domain" has associated and commonly used meaning in the art of network security, yet Applicant states on page 9: "A domain is a collection of objects that share a common level of trust, and can be owned and controlled by a mobile device stakeholder, such as a mobile device user, a mobile device owner, a carrier or a service provider." Since Applicant is acting has own lexicographer, the Examiner relies upon, at least, these statements to ascertain what Applicant regards as a domain. Gbadegesin states in 8 that "a virtual machine is defined and associated with the resource set." We see in Figure 3 the plurality of Virtual Machines each comprise a unique set of resources protected by respective Access Control Lists (ACLs). Gbadegesin further implements the prior art invention via a cell phone (25). Gbadegesin virtual machines comprise resources that are respective protected by Access Control Lists which is equivalent to Applicant's domain which is a collection of objects that share a common level of trust. Gbadegesin's implementation of the invention on a mobile device further teaches Applicant's domain owned and controlled by a mobile device stakeholder, such as a mobile device user, a mobile device owner, a carrier or a service provider.

As per Applicant's argument A2, while the Examiner acknowledges there exists customary meaning as to what one of ordinary skill regards as a Virtual Machine (hereinafter referred to as VM). Gbadegesin does not explicitly define or limit what he regards as a VM. Applicant's limiting definition as to what is regarded as a VM is not supported by evidence nor fact. The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965); In re Geisler, 116 F.3d 1465, 43 USPQ2d 1362 (Fed. Cir. 1997).

Applicant argues on page 12 of Remarks: "However, the sets of resources in Gbadegesin do not share a level of trust, but rather only share common properties with regard to whether the resources in a set should be concurrently accessed with resources in another set."

The Examiner disagrees and reiterates 31: "The computer ahs two virtual machines, each of which is associated with one resource set. In particular, virtual machine A (VMA) 311 and virtual machine B (VMB) 312 are associated with resource set A 340 and resource set B 360, respectively." The preceding TABLE 2 teaches a resource set table for two Resource Sets, A & B, wherein each Resource Set is stored in a respective VM, VMA & VMB. This partitioning of distinct resources into distinct virtual machines has been interpreted as teaching Applicant's first set of assets each sharing a first level and second set of assets each sharing a second level of trust.

Applicant argues on page 13 of Remarks, "However, no actual determination is made that the request originated from a principal."

The Examiner disagrees. In reviewing the disclosure of the invention, the Examiner finds the claimed limitation to be merely repeated throughout the disclosure with no explicit meaning. Therefore, the Examiner reads the limitation as determining whether the request is from a principal for which access or permission has been allowed. The very same is taught by Gbadegesin by checking if a principal has permission to access a resource inside a virtual machine (30; 34, lines 1-4).

Applicant argues on page 14 of Remarks, "Gbadegesin does not have a trust relationship with any given virtual machine;" Applicant further argues on the same page: "However, the principals in Gbadegesin have no trust relationships with the virtual machines at all. Rather, access control lists simply state rules as to how principals can access resources within the virtual machines."

The Examiner disagrees. Applicant's and applicant's representative are reminded that a prior art reference must be considered in its entirety, i.e. as a whole, including portions that would lead away from the claimed invention; see W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984) [MPEP: 2141.02 VI]. By the mere fact, Gbadegesin teaches, at least, virtual machines with respective resource sets protected by respective ACLs teaches there exist trust "relationships" between principles and resource sets and therefore principles and virtual machines; transitivity concludes such a trust "relationship."

Applicant argues on page 15 of Remarks, "Paragraph 30 discloses whether a principal has permission to access resources, and may permit or deny the principal access accordingly. However, in the cited text no determination is made of where the access request originated."

The Examiner disagrees. Applicant has not explained the difference between a determination as to where the access request originated versus a determination as to whether a principal has permission to access resources. One of ordinary skill would conquer that if a principal has permission to access a resource, such a request to access said resource must have "originated" from an approved source; likewise, if a principal lacks the permission to access a resource, such a request to access said resource must have "originated" from an untrustworthy source. Applicant has not set forth an explicit definition for "originated" in the claimed context and so is broadly interpreted as validating whether a principal has permission to access a resource.